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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1944.

JAMISON COAL AND COKE COMPANY, a Corporation,
Petitioner,

vs.

KATE B. GOLTRA and E. FIELD GOLTRA, JR., Executors of the Estate of Edward F. Goltra, Deceased, and ERASTUS WELLS, J. CLARK STREETT and TOM K. SMITH, Trustees Under Indenture of Trust Dated December 28, 1934, Executed by Rolla Wells,
Respondents.

No. 489.

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

BRIEF IN OPPOSITION THERETO.

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Dated at St. Louis, Missouri,
October 9, 1944.

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PRELIMINARY STATEMENT.

The purpose of this brief in opposition to the petition for writ of certiorari is to aid this Court in orienting itself to the problems involved. Therefore, no endeavor is made to re-examine all the reasons and the numerous authorities upon which the Courts below have sustained the motion to dismiss.

SUMMARY OF ARGUMENT.

The decision of the Circuit Court of Appeals in affirming the dismissal of plaintiff's suit was correct because that suit was founded on a contract the enforcement of which must conform to Missouri law, by which law said contract is void and unenforceable because it is speculative and champertous.

Griffin v. McCoach, 313 U. S. 498, l. c. 503, 506;
Mississippi and Mo. R. R. Co. v. Cromwell, 91 U. S. 643, l. c. 645;
Burnes v. Scott, 117 U. S. 582, l. c. 589;
Curry v. Dahlberg, 341 Mo. 897, l. c. 909;
Taylor v. Perkins, 171 Mo. App. 246, l. c. 254.

HOLDING OF CIRCUIT COURT OF APPEALS.

The original action which petitioner brought in the District Court was for certain equitable remedies to enforce a contract dated May 6, 1932, entered into between petitioner and the late Edward F. Goltra, whereby petitioner agreed to advance $5,000 to be used by Goltra in connection with certain litigation he had against the United States Government and whereby Goltra agreed, in return, to apply a portion of any proceeds which he might gain from the litigation ($105,000 is the amount for which suit is here brought) to the purchase from petitioner of certain bonds alleged to be worthless. Your respondents were made defendants in this action as executors of the will of Edward F. Goltra. They moved *in limine* to dismiss the action and have contended throughout these proceedings that the contract of May 6, 1932, is unenforceable on two grounds; first, that it is devoid of equity, and, second, that it is champertous (Record p. 14). In these contentions they have been sustained by both the District Court (Record p. 15, Fol. 26), and by the Circuit Court of Appeals,

which held, as to the general equity point (Record pp. 39, 40):

> "One of the settled principles of equity is that a contract based on a hazard will not be enforced. **Mississippi and Mo. R. R. Co. v. Cromwell,** 91 U. S. 643, 645. Such was the character of the contract of May 6, 1932,"

and, as to the champerty point (Record pp. 40, 41):

> "The contract having been made in Pennsylvania, and the suit brought in a federal court in Missouri, the question is presented whether its enforceability is controlled by the lex loci contractus or the lex fori. In diversity of citizenship cases federal courts must follow the conflict of laws rules prevailing in the states in which they sit. **Klaxon Co. v. Stentor Co.,** 313 U. S. 487; **Order of United Commercial Travelers v. Meinsen,** 8 Cir., 131 F. 2d 176, 179. Federal courts consistently refuse to enforce contracts which are against the public policy of the state in which the court sits. **Griffin v. McCoach,** 313 U. S. 498, 503, 506; **Union Trust Co. v. Grosman,** 245 U. S. 412; **Logan & Bryan v. Postal Telegraph & Cable Co.,** E. D. Ark., 157 F. 570, 586, 587. Compare **Casserleigh v. Wood,** 8 Cir., 119 F. 308. In Missouri the rule is that foreign contracts contrary to the public policy of Missouri will not be enforced. **Maxey v. Railey & Bros. Banking Co.,** Mo. App., 57 S. W. 2d 1091, 1093.
>
> "In Missouri not only is a champertous contract void, **Curry v. Dahlberg,** Mo., 110 S. W. 2d 742, 748; **Taylor v. Perkins,** Mo. App., 157 S. W. 122, 124; **Burnes v. Scott,** 117 U. S. 582, 589; but a contract merely 'savoring of the character of maintenance' is void as against public policy. **Ryan v. Miller,** Mo., 139 S. W. 128, 132, 133. It is not necessary, therefore, to hold that the contract in this case comes strictly within the technical definition of champerty in order to sustain the ruling appealed from. The contract so far savored of the character of champerty as to justify the denial of equitable relief based upon its provisions."

ARGUMENT.

I. Contract Void as Champertous Under Missouri Law.

No useful purpose is served by following at length the ramifications of the petitioner's argument that the language of the contract is such as to create an equitable lien. The Circuit Court of Appeals, after reviewing the authorities on the question at some length, has reached the considered conclusion that, in view of the language used, no lien was created. Moreover, whatever the force of the language, the fact remains that the heart of the contract is blighted by champerty, and, therefore, the contract cannot be the basis of any action at law, far less one in equity. In this respect, Missouri law controls (**Griffin v. McCoach**, 313 U. S. 498, l. c. 503, 506). Both lower Courts, which are familiar with that law, have held that the petition based on this contract must fail because the contract, judged by Missouri law, is champertous in nature. This was the Missouri law when this Court said in 1886, in the case of **Burnes v. Scott**, 117 U. S. 582, l. c. 589:

> "At common law and by statute, both in England and in many of the United States, champerty was a criminal offense. But at the present time, in most of the States, to aid the lawful suit of another with money or services, in consideration of a share in the recovery, is not considered or punished as a crime. But in many of the States champertous contracts are considered void. This is the case in Missouri, where the present case was tried, the Supreme Court so holding, on the ground that the common law had been adopted by statute in that State. See **Duke v. Harper**, 66 Mo. 51."

And it remains the law in Missouri today.

"The law of champerty and maintenance is in force in this State * * * The purpose of the law of champerty and maintenance was to prevent officious intermeddling in the affairs of others for the purposes of speculation * * *." (**Curry v. Dahlberg**, 341 Mo. 897, l. c. 909.)

II. Petitioner's Arguments Answered and Authorities Distinguished.

Nor does petitioner suggest anything which would render questionable the decisions of the two lower Courts in respect to these central issues in the case. On the score of speculation, the only argument it can muster is that, because the Coal Company had lost heavily in its prior business relations with a company of which Goltra was president, it was justified in gambling on the outcome of Goltra's lawsuit against the Government. Its activities were not, so the argument runs, speculation for gain, but merely an endeavor to recoup losses. Plainly, the previous relationship of the parties has no bearing on the speculative nature of the transaction and the argument is wholly without merit.

On the score of champerty, petitioner cites, as ground for error by the Courts below, five cases, none of which will sustain that contention. (It should be noted, of course, that petitioner's approach to this question is in the manner of one seeking full review rather than writ of certiorari.) In this connection, petitioner makes two contentions. First, that there was no "intermeddling" by petitioner such as is referred to by the Court in Curry v. Dahlberg (supra) when it speaks of "an officious intermeddling in the affairs of others for the purposes of speculation." Petitioner contends that, because, by the allegations of the petition below, Goltra requested the Coal

Company to enter into the contract, the Company came on invitation and was therefore not an intermeddler. Obviously, the Coal Company, whatever its relation to Goltra, was an intermeddler as to the United States Government, which was the other party to the suit in which the Coal Company was buying an interest. In this connection, the often quoted language of the Court in Taylor v. Perkins, 171 Mo. App. 246, l. c. 254, is pertinent:

> "In the cases which have been decided by the Supreme Court, and in this Court, it has been stated and conceded that relations may aid one another, that the prosperous may, in charity, aid his poor and unfortunate friend, without incurring guilt of maintenance. But **where sordid gain is the contractual motive**, the ties of blood and of charity and friendship are succeeded by selfishness, and **what would have been humane maintenance becomes unlawful champerty.** In this respect there is a difference between champerty and maintenance. **Relationship, friendship,** charity, **may excuse maintenance, but not champerty.**" (Emphasis supplied.)

In the present case we are, of course, concerned with champerty (a bargain whereby money is advanced for litigation in exchange for an interest in the proceeds of the litigation over and above a mere return of the money advanced) rather than maintenance (a bargain whereby money is advanced in exchange for an interest in the proceeds of the litigation but only up to the amount advanced.)

Petitioner cites three cases to show that the law of champerty is not applicable in suits against the Government. Whatever the validity of such cases (which would seem to foster litigation against the Government), they do not purport to expound the common law of champerty as it is enforced in Missouri. Petitioner, recognizing this, cites De Pass v. B. Harris Wool Company, 346 Mo. 1038,

144 S. W. (2d) 146, in an effort to show that Missouri has chosen to look to federal law in such matters. The case cited stands for no such extraordinary proposition, but is authority for the rather obvious rule that the qualifications of a practitioner before an administrative board are to be established by the board itself.

CONCLUSION.

Consequently, the decisions of the lower Courts, far from containing such conflict with the established law as would warrant this Court in granting review by writ of certiorari, are fully consonant with the law and the decided cases, and, therefore, the petition for writ of certiorari should be denied.

Respectfully submitted,

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